

**DRAFT 09/09/2004**

**STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES**

**LOG SALE AND PURCHASE CONTRACT**

**AGREEMENT NO. 076337**

**SALE NAME: Ridge Wire CH**

**THE STATE OF WASHINGTON DEPARTMENT OF NATURAL  
RESOURCES, HEREINAFTER ACTING SOLELY, IN ITS PROPRIETARY  
CAPACITY, STATE, AND [Purchaser Name here], PURCHASER, AGREE AS  
FOLLOWS:**

**Section G: General Terms**

**G-001 Definitions:** The following definitions apply throughout this contract.

Contract Administrator: Region Manager's designee who is responsible for assuring that the contractual obligations of the Purchaser and Contractor are met.

Contractor: State-selected harvester who will perform all activities required by the Harvesting Services Contract, including but not limited to timber harvesting, road construction services, debris removal and piling, delivery of or delivering logs for weighing and/or scaling, and hauling of forest products under the direction of the State, as landowner, for the purpose of delivering logs to the Purchasers of the timber sales sorts.

Delivery: Occurs when logs meeting the sorting specifications arrive at the Purchasers destination, as described in the contract.

Harvesting: A general term, referring to the Contractor's various obligations under the Harvesting Services Contract.

Harvesting Services Contract: Contract between the Contractor and the State, which sets forth the procedures and obligations of the Contractor for completing the harvesting of timber, and the delivery of various log sorts to the State's purchasers, and the payment obligations of the State, The Harvesting Services Contract will include a Road Plan for any road construction or reconstruction, where applicable.

Log Sale and Purchase Contract: Purchase Agreement between the State and Purchaser(s) of particular log sorts from the timber sale.

Purchaser: The company or individual that has entered a Log Sale Contract with the State for individual log sorts from the timber sale area. The Contractor must deliver the designated log sorts to this company or individual. Contractor will likely be delivering different log sorts to different purchasers under the Harvesting Services Contract.

State: The Washington State Department of Natural Resources, landowner and seller of logs from the timber sale area. The State is represented by the Region Manager as designated on the contract signature page. Contractual obligations to the State are enforced by the Region Manager or the designated Contract Administrator.

G-011    Products Sold

Purchaser was the successful bidder on [November 15, 2004](#) and sale was confirmed on [\[Confirmation Date here\]](#). The State, as owner, agrees to sell and deliver to the Purchaser logs meeting the log sort specifications as described in the G-023 clause. Logs will be delivered from the [Ridge Wire CH](#) Timber Sale described as parts of Section(s), [16, 17, and 21](#), Township [28](#) North, Range 8 East, W.M., in [Snohomish](#) County.

G-020    Inspection By Purchaser

Purchaser hereby warrants to the State that they have had an opportunity to fully inspect the sale area and the forest products being sold. Purchaser further warrants to the State that they enter this contract based solely upon their own judgment of the value of the forest products, formed after their own examination and inspection of both the timber sale area and the forest products being sold. Purchaser also warrants to the State that they enter this contract without any reliance upon the volume estimates, acreage estimates, appraisals, pre-bid documentation, or any other representations by the State Department of Natural Resources.

G-023    Sorting Specifications

Purchaser shall accept and pay for delivery of log sorts by a state selected contractor to the designated Purchaser location that meets the following specifications:

Agreement No.	Sort #	Species/ Diameter	Scaling Rule	Preferred Log Length(s)	Destination
76337	5	WH 5-7"	WS		

“WS” means that west side scaling rules apply; “ES” means that east side scaling rules apply. Minimum trim is six inches per scaling segment for east side scaling rules and ten inches per scaling segment for west side scaling rules.

G-024    Manufacturing Standards

All merchantable logs, except poles, produced and sold under this contract will be manufactured to suitable lengths for meeting the Purchaser’s preferred log lengths for all sorts, with a minimum length of 12 feet.

In addition the State will manufacture and deliver peeler and saw logs with the following minimum specifications:

- a. Sweep will be limited to within the scaling cylinder as measured using a tape stretched between the centers of each end of the log.
- b. Logs in the peeler sorts shall be chuckable with no more than a 2 inch diameter area of rot within a 5 inch diameter circle located at the center of either end of the log.
- c. Limbs and knots shall be cut flush, with no more than 15 percent of a log having limbs or knots over 2 inches in diameter extending more than 2 inches above the surface of the log.

#### G-026 Log Delivery Destination

Purchaser shall accept logs delivered to the destination as described in the G-023 clause. However, the Purchaser may make a request in writing to the State for a change in log delivery destination. If agreeable and in the best interest of the State, the State will approve in writing the Purchaser's request prior to log delivery to the new destination.

Purchaser may refuse loads delivered to the wrong destination.

#### G-027 Log Delivery Schedule and Conditions

- a. Delivery hours - Purchaser agrees to accept logs from the Contractor at the Purchaser's delivery location during Purchaser's working hours or at least between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except legal holidays unless otherwise agreed upon by the State.
- b. Improperly loaded trucks - It is understood and agreed that the Purchaser incurs no obligation to accept improperly or illegally loaded trucks in its facility. Any truck so loaded may be directed to vacate the yard and shall remain the responsibility of the harvesting contractor. The Purchaser shall notify the State within 24 hours of any load (s) rejected and specify the reasons why.
- c. Log Delivery Interruptions – The Purchaser may schedule times in which delivery of logs will not be accepted. The Purchaser shall notify the Contract Administrator at least five (5) working days before the scheduled interruption or closure occurs. The duration of the log delivery interruption shall not exceed seven (7) consecutive days or a total of ten (10) days over the duration of the contract term. If Purchaser's scheduled delivery interruption exceeds contract requirements and causes the State harm, Purchaser will be in breach of contract and subject to liquidated damages as per the D-026 and D-027 clauses, unless Purchaser and the State have made a prior agreement in writing to mitigate potential harm to the State.
- d. Daily Minimum Delivery and Notification- If the State is harmed by purchaser refusal to accept at least ten (10) truck deliveries of any one sort per day, Purchaser will be in breach of contract and subject to damages as per the D-026 and D-027 clauses, unless Purchaser and the State have made a prior agreement in writing to mitigate potential harm to the State. A truck delivery is all the wood hauled including sorts on super trucks, mule trains and pups brought to the delivery point by a single truck. The Purchaser shall notify the Contract Administrator at least 48 hours in advance if:
  1. Purchaser will not accept ten (10) truck deliveries per day, or
  2. Purchaser will not accept over ten (10) truck deliveries per day.
- e. State Notification to Purchaser - The State will notify the Purchaser when it anticipates or schedules an interruption of deliveries.

#### G-034 Contract Term and Expiration Date

Purchaser agrees to accept and pay for forest products delivered through the period ending [July 31, 2005](#).

#### G-053 Contract Term Extension

Contract extensions and any other conditions subject to the extension as agreed to by the State, must be formalized in writing and signed by Purchaser and State, and attached to this Log Sale and Purchase Contract as an addendum.

G-055 Contract Termination

The State may terminate this contract in whole or in part by giving fifteen (15) days written notice to the Purchaser when it is in the best interests of the State. If this contract is so terminated, the State shall be liable only for the return of that portion of the initial deposit that is not required for payment, and the return of unapplied payments. The State shall not be liable for damages, whether direct or consequential.

G-061 Exclusion of Warranties

The PARTIES AGREE that the IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE and ALL OTHER WARRANTIES EXPRESSED OR IMPLIED ARE EXCLUDED from this transaction and shall not apply to the goods to be harvested or sold. For example, THE FOLLOWING SPECIFIC MATTERS ARE NOT WARRANTED, and are EXCLUDED from this transaction:

- a. The MERCHANTABILITY of the forest products. The use of the term "merchantable" in any document is not intended to vary the foregoing.
- b. The CONDITION of the forest products. The forest products will be conveyed "AS IS."
- c. THE VOLUME, WEIGHT, AMOUNT, QUALITY, OR GRADE of the forest products to be harvested. The descriptions of the forest products to be conveyed are estimates only, made solely for administrative and identification purposes.
- d. Items contained in any other documents prepared for or by the State.

G-071 Limitation on Damage

In the event of a breach of any provision of this contract by the State, the liability of the State shall be limited to return of the unused initial deposit and unapplied payments to the Purchaser. The State shall not be liable for any damages, whether direct, incidental, or consequential.

G-112 Title

The State hereby warrants that State is the owner of said logs and has the right to sell same, free of liens, encumbrances, or claims, but subject to trade restrictions promulgated in WAC 240-15-015. Purchaser assumes title and all risk and responsibility for said logs upon delivery.

G-162 Agents

The State's rights and duties will be exercised by the Region Manager. The Region Manager will notify Purchaser in writing who is responsible for administering the contract. The Region Manager has sole authority to waive, modify, or amend the terms of this contract in the manner prescribed in clause G-180. No agent, employee, or representative of the State has any authority to bind the State to any affirmation, representation, or warranty concerning the logs conveyed beyond the terms of this contract.

The Purchaser agrees to notify the State in writing of their authorized representative at the log delivery destination who will be readily available and who shall be authorized to receive, on behalf of the Purchaser any instructions or notices given by the State in regard to performance under this contract, and any limits to this person's authority.

G-170 Assignment and Delegation

Purchaser shall assign no rights or interest in this contract without prior written permission of the State. Any attempted assignment shall be void and ineffective for all purposes unless made in conformity with this paragraph. Purchaser may perform any

duty through a delegate, but Purchaser is not thereby relieved of any duty to perform or any liability. Any assignee or delegate shall be bound by the terms of the contract in the same manner as Purchaser.

G-180 Modifications

Waivers, modifications, or amendments of the terms of this contract must be in writing signed by Purchaser and the State to become effective.

G-190 Contract Complete

This contract is the final expression of the Parties' agreement. There are no understandings, agreements, or representations, expressed or implied, which are not specified in this contract.

G-202 Notice

Notices required to be given under the following clauses shall be in writing and shall be delivered to the State or Purchaser's authorized agent or sent by certified mail to the Purchaser's post office address, so that their receipt may be acknowledged.

G-026 Log Delivery Destination

G-027 Log Delivery and Schedule Conditions

G-211 Violation of Contract

P-030 Mis-sorts and Payment Reduction Option

P-031 Mis-manufacture and Payment Reduction Option

All other notices required to be given under this contract shall be in writing and delivered to their respective authorized agent or mailed to the Party's post office address. Parties agree to notify the other of any change of mailing address.

G-211 Violation of Contract

- a. If Purchaser violates any provision of this contract, the Contract Administrator, by written notice, may suspend delivery of further loads of forest products. If the violation is capable of being remedied, the Purchaser has five (5) days after receipt of suspension notice to remedy the violation. If the violation cannot be remedied (such as violation of WAC 240-15-015) or Purchaser fails to remedy the violation within five (5) days after receipt of a suspension notice, the State may terminate the rights of the Purchaser under this contract and collect damages as described in the damages clause in this contract.
- b. The State has the right to remedy the breach in the absence of any indicated attempt by the Purchaser or if Purchaser is unable, as determined by the State, to remedy the breach. Any expense incurred by the State shall be charged to Purchaser and shall be paid within thirty (30) days of receipt of billing.
- c. If Purchaser's violation is a result of a failure to make payment to the State when due, in addition to (a.) above, interest shall accrue on the unpaid balance at 12 percent per annum, beginning the date payment was due. The State may secure payments from the security provided.

G-241 Dispute Resolution

The following procedures apply in the event of a dispute regarding interpretation or administration of this contract and the parties agree that these procedures must be followed before a lawsuit can be initiated.

- a. In the event of a dispute, Purchaser must make a written request to the Region Manager for resolution prior to seeking other relief.
- b. The Region Manager will issue a written decision on Purchaser's request within five business days.

- c. Within five business days of receipt of the Region Manager's decision, the Purchaser may make a written request for resolution to the State Lands Steward of the Department of Natural Resources.
- d. Unless otherwise agreed, the State Lands Steward will hold a conference within 15 calendar days of the receipt of Purchaser's request for review of the Region Manager's written decision. Purchaser and the Region Manager will have an opportunity to present their positions. The State Lands Steward will issue a decision within a reasonable time of being presented with both Parties' positions.

G-250 Compliance with all Laws

Purchaser shall comply with all applicable statutes, regulations and laws including but not limited to the applicable requirements of WAC 240-15-015 (relating to the prohibition on export and substitution), WAC 240-15-25 (reporting requirements) and WAC 240-15-030 (enforcement).

G-252 Forest Excise Tax

The Purchaser shall be responsible for payment of all forest excise taxes pursuant to chapter 84.33 RCW.

G-253 Harvesting Cost Information

The State agrees to supply all harvesting cost information to the Purchaser for their consideration in payment of forest excise taxes.

G-260 Venue

The laws of the State of Washington shall govern this contract. In the event of a lawsuit involving this contract, venue shall be proper only in Thurston County Superior Court.

G-331 Contract Review

State may arrange with the Purchaser to review the provisions of this contract prior to the delivery of logs.

Section P: Payments and Securities

P-010 Initial Deposit

Purchaser paid [Initial Deposit Amount here] initial deposit, which will be maintained pursuant to RCW 79.15.100. If the Purchaser fails to complete all contractual obligations before the contract term expires, the initial deposit will be immediately forfeited to the State.

P-028 Payment For Logs Delivered

Purchaser agrees to pay the State for delivered logs at the following rate:

[Amount per ton here]\$/ton

[Amount per mbf here]\$/mbf

**(Use line above that corresponds to type of sort sold)**

Any scribner scaled logs, that become non-merchantable due to scaling defects that are delivered and accepted by the Purchaser will be paid for at \$5.00/mbf gross scale.

Purchaser agrees to adjust the above delivered log rate as approved by the State in the event the location of delivery is changed per the G-026 clause.

P-030 Mis-sorts and Payment Reduction

Logs delivered that do not meet the receiving Purchaser's log sort and sorting specifications in G-023, where species are mixed, or are scaled over 1" out of tolerance of scaling diameter, and logs not meeting the minimum merchantability requirements as designated for this log sales contract per clause L-010, are considered mis-sorts. The Purchaser receiving mis-sorted logs is required to pay the State for mis-sorted logs at the Purchaser's bid prices for the sort being delivered, under this contract.

However, when the mis-sort volume amounts to more than 3% of the total delivered sort volume, the Purchaser shall notify the Contract Administrator in writing prior to contract expiration and may, at the Purchasers discretion, reduce final payment amount to the State such that the payment reduction shall be calculated by multiplying the payment value in P-028 by the amount of mis-sorted volume, times 30% as follows:

$$\text{Mis-sort Payment Reduction} = (B \times V) \times (.3)$$

Where:

B = bid rate per ton or mbf from P-028 clause

V = total mis-sort volume

Any payment reduction calculated by the Purchaser must be approved by the Contract Administrator, prior to the payment of the final billing period.

Third party scaling organization information is required to determine Scribner mbf mis-sort for payment reduction. Value of mis-sort will be derived from the applicable sort value as described in this contract.

Purchaser's exclusive remedy for mis-sorts shall be the payment reduction described in this clause, notwithstanding other provisions in the Uniform Commercial Code.

P-031 Mis-manufacture and Payment Reduction

Logs delivered that do not meet the receiving Purchaser's preferred log length specifications as described in the table in G-023, and logs not meeting minimum log quality specifications for sweep, peeler sorts, untrimmed limbs and knots as described in the G-024 clause are considered mis-manufactured logs. The Purchaser receiving mis-manufactured logs is required to pay the State for all mis-manufactured logs at the Purchaser's bid prices for the sort(s) being delivered.

However, when the mis-manufactured log volume amounts to more than 3% of the total sort volume, the Purchaser shall notify the Contract Administrator in writing prior to contract expiration and may, at the Purchasers discretion, reduce final payment to the State such that the payment reduction shall be calculated by multiplying the payment value in P-028 by the amount of mis-manufactured volume, times 20% as follows:

$$\text{Mis-manufacture Payment Reduction} = (B \times V) \times (.2)$$

Where:

B = bid rate per ton or mbf from P-028 clause

V = total mis-manufactured volume

.2 = reduction factor for mis-manufacture

Any payment reduction calculated by the Purchaser must be approved by the Contract Administrator, prior to the payment of the final billing period.

Third party scaling organization information is required to determine Scribner mbf mis-manufacture for payment reduction. Value of mis-manufacture will be derived from the applicable sort value as described in this contract.

Purchaser's exclusive remedy for mis-manufactured logs shall be the payment reduction described in this clause, notwithstanding other provisions in the Uniform Commercial Code.

P-035 Purchaser Weighing and Scaling Costs

Purchaser agrees to pay for all weighing and scaling costs for logs delivered.

P-041 Payment Security for Logs Delivered

Prior to delivery, Purchaser shall guarantee payment to the State for forest products delivered by posting with the State an approved payment security. If the Purchaser has purchased more than one sort, the payment securities may be consolidated for all the sorts. Acceptable payment security includes cash, certificate of deposit assignment, payment bond, savings account assignment, or irrevocable bank letter of credit.

The amount of payment security shall be determined by the State. The amount of payment security shall represent at least 30 days value of log deliveries. Payment security for logs delivered will be used to guarantee payment to the State for late or non-payments.

If at any time the State determines that the security has become unsatisfactory or a demand is made against the payment security, the Purchaser agrees to increase the amount or replace the security with one acceptable to the state within 30 days.

P-051 Billing and Payment Procedure for Logs Delivered

The State will compute and forward to Purchaser a billing statement of charges for logs delivered during the billing period at the delivered rate shown in P-028 clause. Purchaser shall pay for logs delivered on a monthly basis. After receipt of the billing statement, Purchaser's payment must be received by the Department of Natural Resources on or before the due date shown on the billing statement. Purchaser agrees to make payment, payable to the Department of Natural Resources. Failure to pay on time for forest products delivered is considered a breach of contract.

Included with the billing statement will be a summary report for the billing period compiled by the State or their log and load reporting service.

The State will adjust final billings to account for payment reduction for mis-sorts and mis-manufacture of logs as per clauses P-030 and P-031 respectively.

Section L: Log Definitions and Accountability

L-010 Merchantable Forest Products

Merchantable forest products are logs or parts of logs as defined by the requirements for the lowest sawmill grade of the standard log scaling rules applicable to this contract. Logs or parts of logs not meeting merchantable forest products minimum requirements are considered utility logs. Logs that do not meet minimum utility specifications are considered cull logs.

Non-merchantable logs are logs not meeting the minimum merchantability requirements of the scaling rules as designated for this harvesting contract.

L-014 Log Sorts Delivered to Incorrect Destination

The Purchaser has only agreed to purchase the log sort described in the G-023 clause. In the event a load of logs from a different sort not meeting the log sort is mis-delivered to Purchaser, Purchaser may reject the load. If Purchaser receives a mis-delivered load, they shall notify the State within 24 hours. If the Purchaser accepts the load of logs, provisions in the P-030 clause shall apply.

L-072 Log and Load Reporting Service

This contract may at the States discretion, require the services of a State approved third party log and load reporting service. The Purchaser shall ensure log volume



measurement, weight, or scale and weight data for each load is received by the log and load reporting service within 24 hours of logs being measured or weighed.

If during the term of this contract, the State discontinues use of the Log and Load Reporting Service, the State will notify the Purchaser in writing, and will approve an alternative log and load reporting process.

L-080 West Side Scaling Rules

Determination of volume and grade of any forest products shall be made in accordance with the official log scaling and grading rules developed by the Northwest Log Rules Advisory Group that are in effect on the date of confirmation of this contract unless otherwise stated.

L-111 Weighing and Scaling Authorization

The weighing and scaling facilities for this contract must be approved by the State. Prior to logs being hauled, the Contract Administrator must authorize in writing weighing and scaling facilities that are at or in-route to final destinations. No logs from this sale may be weighed/scaled at facilities, which are not currently approved for use by the State and are not currently authorized for this sale. The State reserves the right to verify load weights/scale with State employees and equipment at the State's own expense and revoke authorization of approved weighing and scaling locations.

Section D: Damages

D-012 Liquidated Damages

The following clauses in the DAMAGES section of this contract provide for payments to the State for certain breaches of the terms of this contract. These payments are agreed to as liquidated damages and are not penalties. They are reasonable estimates of anticipated harm to the State caused by Purchaser's breach. The State and Purchaser agree to these liquidated damages provisions with the understanding of the difficulty of proving loss and the inconvenience or infeasibility of obtaining an adequate remedy. These liquidated damages provisions provide greater certainty for the Purchaser by allowing the Purchaser to better assess its responsibilities under the contract.

D-026 Damages for Log Delivery Interruptions

- a. Purchaser's failure to accept delivery of logs due to an extended delivery interruption exceeding the limits as described in the G-027 clause, results in substantial injury to the State. The Purchaser shall pay the State liquidated damages at a rate of \$1,000.00 per each day of breach, until breach is remedied.
- b. Purchaser's failure to accept a minimum number of delivered logs as described in the G-027 clause, results in substantial injury to the State. The Purchaser shall pay the State liquidated damages at a rate of \$100 per each truck delivery not accepted up to 10 truck deliveries per day, until breach is remedied.

D-027 Failure to Accept Forest Products Sold

Purchaser's failure to accept all or part of the forest products sold in this agreement prior to expiration or completion of the contract results in substantial injury to the State. Either section a. or b. below will apply as determined by the State.

- a. When Purchaser's refusal to accept logs does not prevent further harvesting operations, and logs can be re-sold to another buyer acceptable to the State, Purchaser shall be liable for and pay State for actual damages plus costs, as determined by the State associated with the administration and re-sale of logs not accepted by Purchaser under the terms of this contract.
- b. When Purchaser's refusal to accept logs causes a stoppage of the State's harvesting

operations and prevents the State from further harvest of the sale area, the actual damage to the State and associated costs are difficult to assess. The remaining value of all the forest products left in the sale area once the stoppage occurs is not readily ascertainable. Purchaser's failure to perform disrupts the State's management plans. Therefore, Purchaser agrees to pay the State as liquidated damages, a sum calculated using the following formula:

$$LD = (.35V - I) + C + A - P$$

Where:

- LD = Liquidated Damages
- V = The stumpage value remaining in the sale area at the date of work stoppage. This will be determined by multiplying the contract bid rate contained in the P-028 clause for all sorts originating in the sale area, by the State's estimate of the remaining volume, less the cost of harvesting and delivery associated with each sort.
- I = Initial Deposit
- C = Costs associated with required harvesting services and road construction services prior to work stoppage but not amortized or paid.
- A = Administrative fee = \$2,500.00
- P = Advance payments received exceeding the value of logs delivered under this contract.

The above formula reflects the Purchaser's forfeiture of the initial deposit in accordance with clause P-010 by deducting the initial deposit from the amount owed. In no event shall the liquidated damages be less than zero. Interest on the liquidated damage is owed from the date of the work stoppage until final payment, calculated using the following formula:

$$\text{Interest} = r \times LD \times N$$

Where:

- r = daily equivalent of an annual interest at current interest rate as established by WAC 332-100-030.
- N = Number of days from work stoppage to time of payment

IN WITNESS WHEREOF, the Parties hereto have entered into this contract. When the State's harvesting contractor delivers logs meeting the sort specifications as described in this contract, the Purchaser agrees to pay the State for the delivered logs and is responsible for paying for any other weighing and/or scaling services or fees, as specified under the terms of this Log Sale and Purchase Contract.

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

[Purchaser Name here]  
Purchaser

**William J. Wallace**  
Northwest Regional Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Address:

[Purchaser Address here]

CORPORATE ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally  
appeared \_\_\_\_\_  
\_\_\_\_\_ to me known to be the  
\_\_\_\_\_ of the corporation  
that executed the within and foregoing instrument and acknowledged said instrument to be the  
free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned,  
and on oath stated that (he/she was) (they were) authorized to execute said instrument and that  
the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and  
year first above written.

\_\_\_\_\_  
Notary Public in and for the State of

\_\_\_\_\_  
My appointment expires \_\_\_\_\_